

APPEAL NO. 040182
FILED MARCH 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 29, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals this determination on sufficiency of the evidence grounds and asserts that the Texas Workers' Compensation Commission (Commission) exceeded its authority in enacting portions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to first quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue was whether the claimant had a total inability to work during the qualifying period, in accordance with Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer found that "other records" essentially showed that the claimant had some ability to work during the qualifying period. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As stated above, the claimant contends that the Commission exceeded its authority in enacting Rule 130.102(d)(4), as it pertains to "other records." The Appeals Panel has held that it does not have authority to decide the validity of Commission rules and that the courts are the proper forum for such matters. See Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge